IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 10603 of 2006(K)

PETITIONER:

SRI. GEORGE THOMAS,
KOCHUPURACKAL HOUSE, PATHAMPUZHA P.O.,
POONJAR, THEKKEKARA.

BY ADV. SRI.JOHN K.GEORGE

RESPONDENTS:

1. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), MEENACHIL, PALA P.O.

2. THE MEENACHIL EAST URBAN CO-OPERATIVE BANK LTD.NO.4266, POONJAR THEKKEKARA, REPRESENTED BY ITS GENERAL MANAGER.

ADDITIONAL 3rd RESPONDENT:

3. THE VILLAGE OFFICER, POONJAR THEKKEKARA VILLAGE POONJAR P.O., (ADDL.R3 IMPLEADED AS PER ORDER IN IA 9966/06 DTD.19.7.06.)

BY ADV. SRI.SHAJI THOMAS PORKKATTIL
GOVERNMENT PLEADER SHRI.RAVIKRISHNAN.
SRI.P.N.SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 10603/06

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE DEED DTD.1.6.98.
\

P2. COPY OF THE DEEPIKA DAILY DTD.5.12.05.

P3. COPY OF THE RECEIPTS 3 IN NUMBER.

P4. COPY OF THE REQUEST DTD.30.1.2006 BEFORE R2.

P5. COPY OF THE ENCUMBRANCE CERTIFICATE DTD.28.3.2006.

P6. COPY OF THE COMPLAINT DTD.15.3.2006 BEFORE R1.

Sdk+
.

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

==========

W.P.(C).No.10603 of 2006

==========

Dated this the 26th day of February, 2007

J U D G M E N T

The petitioner is an auction purchaser of 1 acre and 80 cents of property in certain survey number from the 2nd respondent society. The sale was also confirmed in favour of the petitioner by the 2nd respondent society. The petitioner's grievance is that pursuant to the sale, the 2nd respondent is not executing the sale deed in respect of the property purchased by him and handing over possession of the same. The contention of the 2nd respondent society is that there has been some mistake in the survey number of the property and the revenue authorities have been requested to correct the same. It is because of the delay in getting the same corrected, that the 2nd respondent society is not in a position to execute the sale deed is the stand of the 2nd respondent. But the petitioner submits that the submission is not

entirely correct since the society is not in possession of one acre and 80 cents, but only one acre and 40 cents. The counsel for the 2nd respondent submits that the 2nd respondent is prepared to convey the properties received by the 2nd respondent from its seller as per the sale deed in their favour, and if the petitioner is not willing to accept the same, they are prepared to return the sale consideration received by him. Both are not now acceptable to the petitioner. The petitioner submits that the society is bound to execute the sale deed in respect of one acre and 80 cents of land, which was sold in auction to the petitioner as per Ext.P2. According to him, if they are not in possession of the entire one acre and eighty cents, sale deed should be executed for the area in their possession and the proportionate balance consideration returned to him.

2. After hearing both sides, I am satisfied that, to resolve this dispute, the forum is elsewhere. The petitioner has either to file a suit for specific performance of the contract between

the petitioner and the 2nd respondent or file an application under Section 69 of the Kerala Co-operative Societies Act, if the same is maintainable. Therefore, without prejudice to the right of the petitioner to resort to such remedies, this writ petition is closed.

sdk+ S.SIRI JAGAN, JUDGE